

was, by its payment, in that particular, terminated; and the case, in that respect also, finally brought to a close.

The heirs of Richard Jordan, deceased, had, however, by their petition alleged, that a large amount of the purchase money had, during their infancy, under the order of the Court, been paid to Edmund Key, their guardian, by the trustee Cook, and by the purchaser Booth, and been wasted by the said Key, who had thereafter become and then was insolvent; and that Booth, the purchaser, having been bound, in a guardian's bond, as one of his sureties, they had a lien upon Booth's estate for the amount so paid to and wasted by Key. Therefore, as Key was, as they alleged, no party to these proceedings, they prayed, that he might be summoned as such, that they might have the benefit of his answer. It being a general rule, that all co-obligors must be made parties, it seemed to have been conceived to be proper thus to ask **297** to have Key *brought before the Court. But, admitting, that he had not by his petition to have the proceeds paid to him submitted to be treated as a party, as a co-obligor who is insolvent need not be made a party; Key, who was alleged and shewn to be so, was not a necessary party; since no decree against him could be of any avail; and his answer, as such, could not be read against any other party. Consequently, all further proceedings against him being useless, the case as to him also was thus brought to a final close.

But Stone & McWilliams, by their petition, stated that they were judgment creditors of Jeremiah Booth, deceased, who had died without leaving personal estate sufficient to pay his debts; or any other real estate than that which had been sold under the decree in this case, leaving a large surplus of the proceeds of sale still undisposed of; and that his administrator John Llewellyn, was dead, leaving a widow Mary, who was the daughter and only heir of Booth. This new cause of complaint, thus ingrafted by this petition upon the remaining stock of this case, gave to it an entirely new character, and converted it into a creditor's suit against the heir of Jeremiah Booth, deceased.

As regards the claim of Stone & McWilliams, as here presented in conflict with that of the heirs of Richard Jordan, deceased, there can be no occasion, at present, to notice the heir of Booth; and the case, as to her, may, so far as regards the question now to be determined, be considered as finally closed; since it has been thus, in fact, reduced to a mere contest between these two rival creditors of Jeremiah Booth, deceased, arising out of their respective claims to a preference of satisfaction out of the surplus of the proceeds of the sale of his real estate.

It has been urged, that Jeremiah Booth had at no time, during his life, any thing more than a mere imperfect right or equitable interest in the real estate from the sale of which this surplus has